

**ATTACHMENT A: SUPERIOR COURT OF ARIZONA IN PIMA COUNTY
ADMINISTRATIVE ORDER**

(DRAFT)

**Administrative Order Number__:
Electronic Filing and Service in Probate Cases**

1. Authorization of electronic filing in probate cases

In accordance with Rule 124 of the Rules of the Supreme Court of Arizona and the corresponding Code of Judicial Administration provisions, the Presiding Judge of Arizona Superior Court in Pima County hereby authorizes electronic filing in any probate case. Electronic filing in probate cases shall be governed by this administrative order.

2. Designation of case as electronic filing case

- a) Any party in a probate case may use the electronic filing system. Such participation is permissive, not mandatory. Parties must adhere to the provisions of this order and file notice of consent to e-filing. Such consent is effective in all subsequent litigation in the probate division involving the consenting party. Consent may be withdrawn at any time upon notice to the e-filing vendor, court and clerk. A notice of “consent” or “withdrawal of consent” to e-filing may be filed electronically or conventionally. Who maintains lists? LN? Notice of Withdrawal of Consent to E-filing may be filed electronically or traditionally.
- b) Participants are bound by the provisions of this order and must enter into a subscriber agreement with _____ or the then current electronic filing vendor approved by this Court.
- c) The commencement date for the electronic filing and service system shall be _____.

3. Definitions of terms

The following terms are defined as follows with regard to this Administrative Order:

- a) Electronic filing system: That system approved by the Arizona Supreme Court for filing and service of pleadings, motions and other papers (“documents”) via the Internet through the court-authorized service provider.
- b) Electronic filing: Electronic filing is the transmission of documents to the clerk of court, and from the court, via the electronic filing system.

- c) Electronic service: Electronic service is electronic transmission of a copy of the document to any party in a case via the electronic filing system. Parties who have subscribed to the electronic filing system have agreed to receive service, other than service of summons, via the electronic filing system.
- d) Participant: A self-represented litigant or their attorney using the e-file system.
- e) Public access terminal: A computer terminal located in the office of the clerk of court through which the public may research and print electronically filed documents.
- f) Document management system: The document storage and imaging system maintained by the clerk of court to store electronic court documents.
- g) Case management system: The system in use by the clerk of court and the court to docket, calendar, assign, and track cases.
- h) E-Filing Vendor: A private firm or other business entity authorized by the court to provide electronic filing and service services.
- i) PDF: A file format created by Adobe Acrobat that preserves all fonts, formatting, colors, and graphics of any source document, regardless of the application platform used to create it.
- j) TIFF: A standardized file format used to store imaged documents.
- k) Scanned document: an electronic image created by scanning a paper document.
- l) Filing: Documents submitted to the court for filing with possibly one or more supporting documents attached.
- m) Hyperlink: An electronic connection or reference to another place in the document, such that when selected the user is taken to the portion of the document to which the hyperlink refers.
- n) E-service list: The list of e-mail addresses registered by counsel of record in the e-filing case.
- o) Conventionally, in the conventional manner: Filing or service of paper documents.

4. Lodging Documents

Documents to be lodged with the court and proposed orders may be transmitted electronically to the court and other parties via email.

5. Documents prohibited from electronic filing

The following types of documents shall be filed conventionally, unless the court expressly requires they be filed electronically.

- a) Documents filed under seal, confidential documents and exhibits. (A motion to file documents under seal, however, may be filed and served electronically.);
- b) Original wills or codicils of a decedent, deposited with the court for safekeeping;
- c) Provisional electronic filing of scanned original wills and codicils that accompany an initial petition or application is allowed provided that the original will or codicil is filed within 5 business days of acceptance of the documents by the clerk. Each original will or codicil filed must be identified by case number.

6. Authenticity of signatures

a) The act of electronically filing a document shall constitute a certification by a filer, subject to penalties for perjury, that the document is a true and correct copy of the original.

b) Every pleading, document and instrument electronically filed or served shall be deemed to have been signed by the judge, clerk, attorney or declarant and shall bear a facsimile or typographical signature of such person, along with the typed name, address, telephone number, and Bar number of a signing attorney.

c) Typographical signatures shall be treated as personal signatures for all purposes under these rules.

d) Documents containing signatures of third-parties (i.e., unopposed motions, affidavits, stipulations, notary seals, bonds, etc.) may also be filed electronically by indicating that the document containing the original signature is maintained by the filing party in paper-format.

7. Official court record (How will we flag how documents filed, either conventionally or electronically, in the court file's index?)

a) Conventional paper file: The court file will be maintained in conventional paper format if any document in a case is filed conventionally. If a case is

initiated electronically, an empty conventional paper file will be created and labeled accordingly.

b) Electronically filed documents: When a document has been electronically filed, the conventional paper court file will be labeled with the following notice: “This case contains electronically filed documents, the conventional paper file is incomplete. The complete record must be reviewed in its electronic format.”

c) Official court record: The electronic format of the court file shall be considered the official court record for any case that contains electronic filings. If a document has been filed electronically, the index of the electronic record shall distinguish documents has been filed electronically.

8. Format of electronic documents

All electronically filed documents shall be formatted in accordance with A.R.C.P. Rule 10 and Pima County Local Rule 9.1. In an e-file case, an e-mail address of the counsel of record shall also be included on each electronically filed document.

9. Signature

Need to talk to LN and IT about this, we think #6 is sufficient .

10. Hyperlinks, bookmarks and other electronic navigational aids

Hyperlinks, bookmarks and other electronic navigational aids between two portions of a filed document shall only refer to other parts in the same document.

11. Printing of electronically filed documents (Why do we need this rule?)

Any electronically filed document must be able to be printed with the same contents and formats as if printed from its authoring program. **Is this superfluous considering that we already have a rule regarding acceptable file formats that limits it to PDF and TIFF files?**

12. Original signed documents to be maintained

a) If a statute requires a sworn pleading or affidavit, then the original signed affidavit or pleading must be maintained by the attorney or self-represented litigant and produced in its original form within 5 days at the demand of another party or the court.

b) Parties shall retain originals until final disposition of the case and expiration of all appeal opportunities.

13. Courtesy copies

Unless otherwise ordered by the court, a party who files any document electronically with the clerk shall not submit a courtesy paper copy of the document to the division.

14. Certified copies

Certified, exemplified or authenticated copies of filed documents may be requested electronically, but will be issued in the conventional manner.

15. *Approved e-filing vendor (Perhaps this isn't a rule, but should appear in E-Filing Guidelines to identify who the current approved vendor(s) is/are) Does this even apply in our case?*

The approved 3-filing vendor for the Court is _____. _____ may be contacted at ____ or through their web site at _____. The approved e-filing vendor is hereby appointed to be the agent of the Clerk of Superior Court as to electronic filing, receipt, service, and/or retrieval of any pleading or documents via the e-filing vendor system.

The Superior Court and Clerk of Superior Court shall, from time to time, solicit bids or request for proposals from other potential E-Filing Vendors and submit to the Presiding Judge any recommendations for change in the designation of the E-Filing Vendor or the terms of the Subscriber Agreement. The Superior Court and Clerk of Superior Court shall provide current and potential E-Filing Vendors all information reasonably necessary to develop a bid or request for proposal to render the services necessary to implement this Administrative Order.

16. *Subscriber Agreement (Isn't this just part of the details or terms of the Subscriber Agreement itself? Should this really be a part of the Rules of Procedure?)*

When a case has been designated an e-file case, each participant shall promptly take the steps necessary to enable counsel or any self-represented litigant to electronically file, serve, receive, review, and retrieve copies of the pleadings, orders, and other documents filed in an e-file case by entering into a Subscriber Agreement with the court-approved E-Filing Vendor.

The Presiding Judge of the Superior Court or his designee, in coordination with the Clerk of Superior Court, shall review and approve the terms of the Subscriber Agreement and any changes to it prior to the Subscriber Agreement taking effect.

The E-Filing Vendor may require payment of a fee or impose other reasonable requirements by contract with a subscriber as conditions for processing electronic filings.

The E-Filing Vendor may not increase fees without giving at least 60 days prior notice to all Subscribers. The Subscriber Agreement shall be terminable by either party upon 30 days prior notice.

17. User ID and password

Upon receipt by the e-filing vendor of a properly executed e-file subscriber agreement at their website, the e-filing vendor shall assign the party or the party's designated representative, a user name and confidential personal identification number (PIN), which may thereafter be used to obtain access to the e-file system. No party who is represented by counsel may personally file documents via the e-file system in that case.

The attorney of record or self-represented party may file, serve, receive, review, print and retrieve electronically filed pleadings, orders, and other documents filed in the designated e-file case according to the terms of the subscriber agreement and this administrative order. No party or their designated representative may access information or documents through the e-file system in a specific e-file case unless they are a party to that particular case.

A user ID and password issued by the e-filing vendor for the purposes of filing documents electronically with the court shall constitute a signature of the registrant of a password on the documents submitted to the court.?

No attorney or other user shall knowingly authorize or permit his/her user ID and password to be utilized by anyone else.

18. Obligation to register (Who will maintain the list?)

All participants in e-file cases must register the e-mail address of record through which they may be served or contacted with the clerk and the e-filing vendor prior to filing any documents electronically. All participants must notify other parties, the clerk and the e-filing vendor immediately of any change to the e-mail address of record, but not later than 3 business days prior to when such a change takes effect. The email address of record must also be included on every document filed in the e-file case.

19. Method of filing

Each document accepted for filing by the clerk shall be electronically file stamped with the time and date of filing, the names of the Clerk of Superior Court and the deputy clerk accepting the filing, and the word "FILED". This file stamp shall be merged with the electronic document and shall be visible when the document is printed and viewed on-line. Electronically filed documents are not complete

without the electronic filing stamp. Filings so endorsed shall have the same force and effect as documents filed in the conventional manner.

20. File formats accepted

The filing party may transmit a document to the e-filing vendor in any format that vendor accepts, provided that the vendor must convert the document to a format accepted by the clerk prior to transmission of the document to the clerk for filing. The clerk currently accepts PDF and TIFF file formats for any electronic filing. All file formats transmitted to the court must be compliant with all standards set forth in sections 1-504 and 1-506 of the Arizona Code of Judicial Administration.

Scanned documents that are skewed or unreadable will not be accepted for filing and will be rejected by the clerk as defective.

21. Confirmation of receipt and filing or rejection of documents submitted for filing

Upon completion of the transmission of a document for filing to the e-filing vendor's system, the e-filing vendor shall return an acknowledgment of receipt of the document. After receipt of a document, the e-filing vendor shall immediately scan the document for viruses. If the document is free from any infection, the e-filing vendor shall make the document available immediately for transmission to the clerk. If the document is infected, the e-filing vendor shall discard the document and transmit a notice to the e-filer that the document was infected and has not been transmitted to the clerk. Upon the acceptance of an electronic document for filing, the clerk shall send (How does this happen? CL: can we just say "Upon acceptance of an electronic document for filing, a notice shall be sent that the electronically transmitted document has been received and filed by the clerk) the filer notice that the electronically transmitted document has been received and filed by the clerk.

If a document is rejected for filing, the clerk shall promptly notify the filer that the document has been rejected and the notice shall set forth the grounds for rejection. The rejected document will not be maintained in the clerk's electronic document management system, nor will it be docketed. It shall be the responsibility of the filing party to verify acceptance of each document and resubmit any rejected document with appropriate corrections.

22. Date and effect of electronic filing

Any document filed electronically shall be deemed accepted by the clerk on the date and time it is successfully received and stored to disk on the e-filing vendor's system, provided that:

- a) Receipt of the document to the e-filing vendor's system is complete by 11:59 p.m. local Tucson time on a day the court is open for business;
- b) All required fees are paid;
- c) The clerk subsequently accepts the document for filing.

If a document is received after 11:59 p.m., or on a day the court is not open for business, the time of filing shall be the opening of business on the next business day of the court.

Evidence of the date and time the document is successfully received and stored to disk shall be maintained by the e-filing vendor's system, and transmitted with the document submitted electronically for filing to enable the clerk to determine the time of filing. The e-filing vendor is required to make any electronically filed document that is not infected by a virus available for transmission to the court immediately after successful receipt and virus checking of the document.

An electronically filed document shall constitute the filing of the original document under the rules governing practice and procedure in the courts of this state. The electronically filed document as it resides on the clerk's electronic document management system and printouts of said document shall be considered the original document satisfying the best evidence rule set forth in rule 1002, Arizona Rules of Evidence

23. Payment of filing fees by subscriber to e-filing vendor

Any document subject to this administrative order requiring payment of a filing fee to the Clerk of the Superior Court to achieve valid filing status (? shall be filed electronically in the same manner as any other document in an e-file case. Filing fees shall be tendered to the e-filing vendor in accordance with the terms of the subscriber agreement between the e-filing vendor and the subscriber.

The e-filing vendor is appointed as limited agent for the Clerk of Superior Court in Pima County for the collection of filing fees and all other monies payable to the court in the course of an action. Court fees collected by the e-filing vendor on behalf of the clerk shall be solely the property of the Clerk of the Superior Court in Pima County.

The e-filing vendor may require each subscriber to provide funds on account or credit card authorization to guarantee the payment of any fees, subject to such terms and conditions as may be prescribed by the e-filing vendor and approved by the (Shouldn't this be Clerk, or Clerk and Presiding Probate Judge or their designee?)

24. Payment of fees by e-filing vendor to the Clerk of Superior Court

The e-filing vendor shall be liable for payment to the Clerk of Superior Court of the correct filing fees for any documents submitted for filing through e-filing vendor's system that are accepted and filed by the clerk. The e-filing vendor shall transmit any monies due to the Clerk of Superior Court's bank account via wire transfer in accordance with the terms of the contract between the Clerk of Superior Court and the e-filing vendor. Not later than 24 hours after the transfer of funds, the e-filing vendor must provide the Clerk of Superior Court a detailed breakdown for each deposit, including the case number, type of transaction, parties, amount and date for each transaction. Fees charged by the e-filing vendor to subscribers for access to and use of the e-file system are solely the property of the e-filing vendor and are in addition to any charges associated with fees required by the Clerk of Superior Court.

25. Responsibility for confirming filing

A person who files a document electronically shall have the same responsibility for ensuring that the document is properly filed, and is complete and readable, as if the document were filed in the conventional manner. The filer shall be responsible for any transmission delay, disruption, or interruption of the electronic signals, and accepts the risk that the document may not be properly filed with the clerk as a result.

26. Interruption in service

The court and clerk shall not be liable for malfunction or errors occurring in electronic transmission or receipt of electronically filed or served documents.

Notwithstanding any other provisions of this administrative order, if the electronic filing is not filed with the clerk because of an error in the transmission of the document to the e-filing vendor which was unknown to the sending party, or a failure to process an electronic filing after receipt by the e-filing vendor, the court may enter an order permitting the document to be filed *nunc pro tunc* to the date it was sent electronically.

27. Electronic delivery of documents by the court

The court may deliver documents electronically instead of by mail to any party or party's attorney who has filed a consent, either electronically or traditionally, to receive e-delivery and e-service of documents.

28. Electronic service of documents

Service of a summons and complaint within a probate case shall be made in the conventional manner as proscribed in A.R.C.P. Rules 3 and 4. **All other document types may be served electronically?**

Except as herein provided, all e-filing parties in a probate case shall make service upon other e-filing parties electronically through the e-filing vendor's system of all documents filed electronically. Service on parties who are not e-Filers, shall be made in the conventional manner.

E-Filing parties in a case shall receive service of all documents served by other e-filing parties via access to the e-filing vendor's system, except as otherwise provided herein or by order of the Judge. Parties who are not e-filers shall receive service in the conventional manner.

The electronic service of pleading or other documents through the e-filing vendor's system shall be considered as a valid and effective service.

29. E-service list (?)

The e-filing vendor is required to maintain an e-service list for each e-filed case, composed of all of the currently registered e-mail addresses of record in the case. The e-service list shall be updated by the e-filing vendor immediately upon being given notice of a new e-mail address of record or a change to an existing e-mail address of record. Whenever a document is submitted for service upon other parties by the e-filing vendor's system, the e-filing vendor shall use the most current e-service list to perform service.

30. When service is complete

Service via the electronic filing system shall be deemed complete at the time of transmission of the document or transmission of an email with an embedded link to the document to the e-service list for that case, as recorded by the e-filing vendor's system, except that where completion of service is after 5:00 p.m. or service is recorded on a Saturday, Sunday, or legal holiday. In such case, the document shall be deemed served at 8 a.m. on the next day that is not a Saturday, Sunday or legal holiday. Counsel so served has a responsibility to view the document.

Proof of service of any document required to be served in an e-filed case must be filed electronically with the Clerk of Superior Court.

31. Computation of time

The electronic delivery of documents by the court pursuant to paragraph 24 of this Rule and the electronic service of documents by parties pursuant to paragraph 25 of this Rule is complete upon transmission.

If the electronic delivery or service of documents is completed on any day after (?5:00 p.m. [Mountain Standard Time] 12:00 p.m.), then such documents shall be deemed to have been transmitted on the next day that is not a Saturday, Sunday or legal holiday.

Whenever a party has a right or is required to take some action within a proscribed period after service is made electronically, such service shall be considered service by mail for the purpose of computing time under any rule of procedure.

32. Extension of time

If service on a party does not occur because of:

- a) Inaccessibility of the e-filing vendor's system;
- b) Error in the transmission of the document to a party, which error was unknown to the serving party or the e-filing vendor;
- c) Failure to process the electronic document for service when received by the e-filing vendor, or;
- d) The party was erroneously excluded from the e-service list;

The party to be served shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the time within which any right, duty, or other acts must be performed.

33. Availability of e-filed documents

The e-filing vendor shall make electronically filed documents and documents being served electronically through the e-filing vendor's system available to subscribers and the court through the e-filing vendor's system in accordance with the current contract between the court and the e-filing vendor and this order.

34. Electronic delivery of documents by the court/Court orders and judgments

Move up; add consent language and fix messiness

The court may issue, file, and serve notices, orders, and other documents electronically in an e-file case, subject to the provisions of this administrative order.

Where a clerk is required to endorse a document, the typed name of the clerk shall be deemed to be the clerk's signature on an electronic document.

35. Public access

The Clerk of Superior Court shall make available to members of the public, without charge and during normal business hours, at least one public access computer **terminal** capable of searching and viewing documents filed of public record in e-file cases. For the purpose of retrieving documents filed in e-file cases, access by the public shall be to the Clerk of Superior Court's electronic document management system, where official electronically filed documents are maintained. The clerk shall make paper copies of any publicly filed electronic documents available at the same rate charged for copies of paper documents.

36. Amendments to Administrative Order, Code of Judicial Administration and Rules of the Arizona Supreme Court

The Presiding Judge of Superior Court in Pima County may amend this Administrative Order, and the Arizona Supreme Court may amend the Code of Judicial Administration and Court Rules from time to time. All parties in cases subject to this order and the e-filing vendor must comply with current and future provisions of this Administrative Order, the Arizona Code of Judicial Administration and the Rules of the Arizona Supreme Court.

